

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Local Competition and Broadband	)	CC Docket No. 99-301
Reporting	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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March 19, 2001

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I. INTRODUCTION AND SUMMARY

Qwest Communications International Inc. (“Qwest”), through counsel, and pursuant to the Federal Communications Commission’s (“Commission” or “FCC”) request for additional comment in the above-referenced proceeding,<sup>1</sup> hereby submits our Comments. In these Comments we focus on specific issues of concern as the Commission seeks to secure “broadband deployment [and availability] [information] at finer levels of geographic granularity and among particular types of customers.”<sup>2</sup> The Commission’s interests in granularity are increasingly at odds with its goals of “limit[ing] [its] data collection, wherever possible, to data that providers routinely keep in the ordinary course of business or that is easily derived from their records”<sup>3</sup> and “on collecting easily-quantifiable and readily-available statistics that providers likely maintain in their ordinary course of business.”<sup>4</sup>

While it is the case that, coming out of the AT&T divestiture, the large incumbent Bell Operating Companies often had common or similar systems and capabilities, competition -- with its burgeoning number of competitors in a variety of telecommunications fields -- has brought

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<sup>1</sup> In the Matter of Local Competition and Broadband Reporting, CC Docket No. 99-301, Second Notice of Proposed Rulemaking, FCC 01-19, rel. Jan. 19, 2001 (“Notice”).

<sup>2</sup> Id. ¶ 2.

<sup>3</sup> Id. ¶ 11.

<sup>4</sup> Id. ¶ 15.

with it disparate and different systems, as well as different collection and manipulation capabilities. For the most part, those capabilities have not been created by service providers to meet regulatory mandates but to accomplish business objectives. Requiring those systems to be changed or modified in order to cull out information that is not necessary for business operations is a *per se* burden on service providers.

While it may be true that “not common” reporting approaches or elements may prove more of a challenge to the Commission (in terms of its data analysis and reporting out of information), the Commission -- as it requires more and more granular information -- must begin to allow and provide for “alternative” data sources and reported information. For example, if the Commission desires information by zip code and carriers can report that way, fine. If they cannot, alternatives that “substantially” meet the reporting objective must be devised. Similarly, if service providers do not have a business reason to track information by customer segment (for example, residential, small or large business), then an alternative reporting methodology should be crafted.

Below Qwest focuses on the burdens that will be imposed (and possibly increased) by the Commission as it continues to become more demanding of reported “detail.” We discuss the Commission’s interest in having subscriber information reported out by “status” (e.g., residential, small business and large business), its apparent interest in proceeding further and further down the road of “reporting by zip code,” and its inquiry into the reporting of “available” broadband services.

Qwest is concerned that it already is challenged by certain of the Commission’s reporting requirements (such as those involving zip codes). That challenge will only get worse, and more costly to meet, if the Commission seeks to create more and more data elements where reporting

by zip code is required. Additionally, Qwest has not only a local exchange carrier (“LEC”) in its family of businesses but a competitive local exchange carrier (“CLEC”), as well. As with any new business, the CLEC desires to devote all its resources (both monetary and personnel) to creating its business and serving its customers in a quality fashion. If the Commission determines to do away with its current threshold requirements, the resources of the CLEC business will in fact be diverted to other causes. It is not clear that the public interest really demands this. But, if it does, at a minimum, the reporting should match the “normal course of business” record keeping.

Finally, we address the issue of the confidentiality of the data submitted by carriers in the filed Reports, a status the Commission proposes to move away from without any meaningful analysis of its reversal of position. Qwest indicates its concern that the Commission is doing an about face on the issue of confidentiality of submitted information. We see nothing since the last round in this proceeding that would warrant a change in position on this matter. We urge the Commission to continue its past practice of treating the reported information confidentially.

II. THE COMMISSION SHOULD REFRAIN FROM CREATING ADDITIONAL DATA ELEMENTS THAT REQUIRE REPORTING BY CATEGORIES OR ELEMENTS NOT KEPT BY SERVICE PROVIDERS IN THE NORMAL COURSE OF BUSINESS OR IT SHOULD PROVIDE ACCEPTABLE ALTERNATIVE REPORTING ELEMENTS

A. Type Of Customer

In its Notice, the Commission seeks comment on changing the current reporting methodology from one where residential and small business subscribers are reported in a single category to one where the small business customer information is culled out into its own category.<sup>5</sup> The Commission notes that many broadband providers may not keep their business

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<sup>5</sup> Id. ¶ 17.

records -- even under the current reporting structure -- by “types of customers.”<sup>6</sup> But it believes the modification to the reporting structure may provide it more meaningful data.

To be sure, the Commission seeks to minimize the burden on carriers by allowing them to estimate the numbers of customers that might constitute small businesses. Qwest could probably live with the approach, so long as the Commission understands and permits the estimation to be based on carriers’ own operating practices. That is, that the Commission not establish a “criteria . . . to distinguish between residential users, small businesses, and large businesses.”<sup>7</sup>

Rather, the Commission should permit the reporting based on the records kept in the ordinary course of business, even if this means that the reported information may have a greater or lesser margin of error depending on the records kept by the carrier. Some carriers for example, have dedicated staffs for “small business” operators (up to a certain line count). For them, the reported figures might be a fairly tight estimate. For other carriers, the estimation may be based on nothing more than educated guesses by business managers expected to know their customer base.

To the extent the Commission is true to its objective to minimize burdens on carriers as it simultaneously seeks more refined data, the type of approach described above is really the only approach that satisfies the objective. It is the approach the Commission should adopt.

#### B. Zip Code Reporting

Similarly with zip code information collection. In its Data Gathering Order,<sup>8</sup> the Commission established a number of reporting requirements by zip code, apparently on the

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<sup>6</sup> Id. n.37.

<sup>7</sup> Id. ¶ 17.

<sup>8</sup> In the Matter of Local Competition and Broadband Reporting, Report and Order, 15 FCC Rcd. 7717 (2000).

belief that such information would be “easily obtainable” from carriers’ “provisioning or billing databases.”<sup>9</sup> While it is true that such information is routinely captured in billing databases, it is not true that such information is always included in the provisioning database (or in the “service address” field of the billing database). Indeed, Qwest’s experience is that about 15% to 20% of the time, the “service address” information in the database we primarily use to create the current reports does not include zip codes.

Thus, when the Commission questions “whether [it] should collect actual subscribership counts by zip code and whether these counts should specify the level of residential subscribership in each zip code,”<sup>10</sup> we are concerned that the Commission may not recall its own concern of the burden that would be visited upon “a national service provider [required] to complete over 30,000 zip-code based forms.”<sup>11</sup>

Zip code reporting is not a simple or efficient element to be culled out of service providers’ databases if the databases do not already have the ability to sort by zip code. Thus the Commission’s zip code reporting proposals can become extremely burdensome. For example, the proposal that the zip code be matched up with the “type of technology used to deliver broadband services and whether the lines in service deliver one-way broadband services or full, two-way broadband services,” -- while “possible”<sup>12</sup> -- would require a great deal of work, demanding an even greater dedication of resources than is currently the case.

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<sup>9</sup> Id. at 7745 ¶ 52.

<sup>10</sup> Notice ¶ 18.

<sup>11</sup> Data Gathering Order, 15 FCC Rcd. at 7745 ¶ 53. And see id., n.166, quoting from the comments of Allegiance to the effect that “the more geographically specific the information to be reported, the greater the burdens imposed on reporting entities, particularly new entrants, who do not maintain subscriber or line data by such narrow geographic categories.” While Qwest [U S WEST] is cited in footnote 165 as supporting reporting by zip code or census block, our comments actually talked about Metropolitan Statistical Areas (MSA) and non-MSA reporting.

If the Commission continues to pursue zip code information, it must craft reporting structures that impose the least amount of burden on carriers attempting to report through that mechanism.<sup>13</sup> Actual subscriber information does not meet that test and the Commission should abandon it.

C. The Availability Of Services

The Commission inquires into whether it should change its reporting structure to require service providers to report not only actual purchasing conduct of customers but “availability,” which -- in the Commission’s words, “reflects a supplier’s capability and willingness to provide service in a given area and within a specified period of time;” or, stated somewhat differently, “the supply of broadband services without regard for any demand issues concerning the price at which such services are offered.”<sup>14</sup> The answer to the Commission’s inquiry is an unequivocal “no,” such information should not be required to be added to the current reports.

Qwest does not support adding this information to the reports, at all. First of all, to respond to this kind of reporting requirement, especially when a service provider is highly regulated and has an obligation to serve, could place carriers in the unenviable position of declaring that a “supply” of some kind exists, even if the carrier (lawfully) would not be willing to provide the services because of technical or price constraints. Essentially, the “availability” would tend to be overstated for many of the reporting carriers.<sup>15</sup> Add to that that carriers would

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<sup>12</sup> Notice ¶ 19 and n.44.

<sup>13</sup> For example, currently Form 477 is an Excel spreadsheet requiring manual inputs. Qwest has in its region alone over 3,000 zip codes which would require the submission of over 3,000 Form 477’s. Under this scenario the rate of error associated with manual inputs significantly increases as well as the cost of labor.

<sup>14</sup> Notice ¶ 20.

<sup>15</sup> Not only would this occur with regulated carriers, but unregulated ones might be quite willing to satisfy a demand if the price were right, thus increasing their available supply.



be reporting overlapping geographical areas in which the services would “be available,” and the matter of overstatement is compounded.

Second, each of the measures the Commission suggests pose some burden on data collection, manipulation and reporting. And, it is not clear if the Commission’s proposed measures are meant to differentiate between telephone or cable video services providers and all others or whether each measure is a measure proposed to apply to any service provider, with “Measure 3)” (i.e., actual numbers of customers that have broadband services “available”) being the only measure restricted with respect to a limited category of service providers.<sup>16</sup>

We intend to review the comments of others submitted on this issue to ascertain whether some alternative proposals are made that might allow the reporting the Commission desires without the burden we envision from the Commission’s express proposal. Perhaps there is some measure that stands up to a cost/benefit analysis that is not now apparent.

### III. THE COMMISSION SHOULD BE MINDFUL OF THE LIMITED AVAILABILITY OF “REPORTING RESOURCES” IN SMALL AND NEW BUSINESSES

The Commission is considering eliminating its current thresholds and mandating reporting for all carriers. At this time, Qwest takes no position on the basic issue. However, we here comment on what the Commission might (or might not) do by way of mandated reporting if the thresholds are eliminated.

Currently, it takes Qwest’s incumbent LEC operations about three days to populate the information and run the report required by this Commission. This is a significant expenditure of personnel and monetary resources. Smaller carriers, especially those just entering into the business, cannot afford to give up three days of business planning or product designing or the

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<sup>16</sup> Notice ¶ 20. Measures 1), 2) and 4) contain no suggestion of being applicable to only one category of service provider or another.

provision of quality customer service. They are fighting every day to meet their customers' immediate needs and insure their own profitability.

Thus, the Commission must work to craft reporting elements that can be populated easily from existing service provider data collections.<sup>17</sup> For reasons similar to those stated above regarding more granular reporting elements, the Commission must seriously work to secure information gained from records kept in the normal course of business. Or, it should allow alternative data sources to be used with respect to reporting elements, even if to do so would affect the overall “purity” of the reported results or the statistical analysis.

#### IV. THE COMMISSION SHOULD **NOT** CHANGE ITS POSITION REGARDING THE CONFIDENTIALITY OF THE REPORTED DATA IN THE COMPETITIVE REPORTS

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When the Commission handed down its Data Gathering Order regarding Competitive Reports in March of 2000, it had an entire Section devoted to the matter of “Confidentiality of Data” (Section F, paragraphs 86-96, 15 FCC Rcd. at 7757-62). Now, in the current request for comment, the Commission devotes but two paragraphs to the matter (paragraphs 25 and 26), where the first paragraph simply paraphrases the current approach (under existing rules) and the second paragraph proposes “revisions.” The proposed revisions essentially turn the matter of confidential treatment of the reported data on its head.

Currently, through the mechanism of simply and efficiently “plac[ing] a check-box on the first page of the FCC Form 477” providers are permitted “to request non-disclosure of all or portions of their submitted data.”<sup>18</sup> Contrast that ease of requesting confidentiality, borne out of what can best be described as a rebuttable presumption that the data is confidential, with the Commission’s proposed revision to “establish a rebuttable presumption that some or all of the

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<sup>17</sup> See note 11, supra.

data in Form 477 does not typically meet [its] standards for competitively-sensitive information.”<sup>19</sup> Beyond this mere observation, there is no discussion or analysis at all as to why the information would not meet the standard for confidential treatment. Qwest believes that the information would, in fact, meet such a standard.

The submitted data contains sensitive commercial proprietary information concerning Qwest’s operations, which Qwest does not customarily release to the public. Rather, Qwest customarily guards this type of information from competitors, inasmuch as such disclosure could result in competitive harm. Therefore, pursuant to Exemption 4 of the Freedom of Information Act, the data would be considered confidential.<sup>20</sup>

Qwest (then U S WEST) commented on the matter of confidential treatment in December of 1999, prior to the Commission’s issuance of its Data Gathering Order. What we said then is equally applicable today:

The detailed information included in the Survey is not typically available among competitive companies -- nor should it be made public given the emerging competitive telecommunications environment.

Local telecommunications markets are becoming increasingly competitive. Product and sales information by geographic location provides line of business data that can give competitors valuable insights into a company’s specific activities and business strategies. By observing this data over time, competitors can gain insights into where its competitors are focusing investment. Access to a telecommunications company’s customer information gives competitors and potential competitors an unfair advantage by allowing them to target that company’s customers.

The local competition and broadband data have value on their own, but when coupled with ARMIS<sup>21</sup> data, publication of information set forth in the NPRM places an [incumbent LEC] such as [Qwest] at a competitive disadvantage when compared to its competitors and

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<sup>18</sup> Data Gathering Order, 15 FCC Rcd. at 7759 ¶ 90.

<sup>19</sup> Notice ¶ 26.

<sup>20</sup> See 5 U.S.C. § 552(b)(4); Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993). The issue is the same whether the reporting carrier is large or small (under the current threshold, see Notice ¶ 26 inquiring on this matter specifically), although the smaller the carrier the more susceptible and vulnerable that carrier might be to the adverse competitive consequences of having the data released.

<sup>21</sup> Automated Management Reporting Information System (“ARMIS”).

potential competitors. Only [Qwest] and the other largest [incumbent LECs] are required to file detailed financial and other information annually in ARMIS reports.

The Commission should therefore treat as confidential any company-specific data. [Qwest] believes that publishing aggregate data by state will meet the Commission's objective and allow the information to be analyzed in light of the goals of Sections 10 and 11 of the Act. By masking the detail of company-specific data, the Commission will allow the market to develop in a truly competitive manner without disadvantaging companies already in the market.

If the Commission does not agree to treat the entire report as confidential then, at a minimum, sections IV, V, and VI of the survey should be afforded confidential treatment.<sup>22</sup> In the prior voluntary surveys filed by [Qwest], for example, information relating to broadband was treated as confidential because of the highly competitive nature of the service.

The survey outlined in the NPRM, moreover, has been expanded to include data on mobile telephony service. Again, because of the highly competitive nature of this service, [Qwest] would propose that it be filed on a confidential basis.<sup>23</sup> The Commission would still be able to access the confidential data to prepare its annual report on local competition. [Qwest] suggests that the Commission in its annual report should publish aggregated data by State, so as not to identify individual carrier market share. This would still serve the Commission's objective of evaluating the development of competitive alternatives to [incumbent LEC] offerings.<sup>24</sup>

Nothing has materially changed since December of 1999 (or March 2000 when the Commission issued its Data Gathering Order) to suggest that treating the submitted material non-confidentially is appropriate. It is true that, in the Data Gathering Order, the Commission made no "finding" that the submitted information was confidential and articulated regulatory objectives that it believed could best be achieved if confidential treatment were preliminarily

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<sup>22</sup> NPRM at Attachment A, FCC Form 477, Section IV -- Number of One-Way and Full Broadband Lines/Channels connected to All End User Customers, Section V -- Number of One-Way and Full Broadband Lines/Channels connected to Residential Customers, Section VI -- Mobile Service Total Subscribers.

<sup>23</sup> From this information, one can discern that operations' subscribership levels. Qwest does not customarily release this kind of information to the public. Moreover, and as the Commission has previously acknowledged, subscribership information of this type involves highly-sensitive marketing information. See In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1997, Report and Order, 12 FCC Rcd. 17859, 17862 ¶ 9 (1997). Furthermore, Qwest customarily guards this type of information from competitors, inasmuch as such disclosure could result in competitive harm.

<sup>24</sup> Comments of U S WEST Communications, Inc. to Notice of Proposed Rulemaking, CC Docket No. 99-301, filed Dec. 3, 1999 at 4-6.

afforded the submitted data (e.g., accurate reporting, promote voluntary reporting). However, the Commission does not explain in the current request for comment how these objectives have changed (or diminished).

Qwest urges the Commission to continue with its current practice of allowing the carriers, “confidentiality justification.”<sup>25</sup> As the Commission acknowledged in that Data Gathering Order, “there is considerable diversity in the way that individual service providers handle the data pertaining to their operations. . . . [S]ome providers release considerable data about the nature of their operations, while others more closely safeguard such data, including the type of data [the Commission] request[s] in the reporting form.”<sup>26</sup> For these reasons, it is hard to imagine that the Commission can make a fair determination on the confidentiality of the submitted data based simply on “what it has seen.”

Qwest believes we could make a showing under the Commission’s rules for confidential treatment, if required, as could other carriers.<sup>27</sup> The Commission’s current practices promote efficiency around the matter of confidentiality. They should not be discarded.

## V. CONCLUSION

The Commission would strain the public interest standard were it to adopt reporting requirements which would place additional regulatory burdens on carriers, large and small, requiring such carriers to report additional data elements not already collected in the normal course of business. Such requirements would increase a carrier’s costs, thus increasing costs to

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<sup>25</sup> Data Gathering Order, 15 FCC Rcd. at 7759 ¶ 90.

<sup>26</sup> Id. ¶ 89.

<sup>27</sup> As the Commission noted in its Data Gathering Order, the standard practice is for carriers submitting confidential information to make the claim for confidentiality in the submission. Said carriers are not required to “prove” the matter unless or until there is a demand made by a third party for disclosure. Id. ¶ 90 and at 7761 n.238.

the consumer. In this competitive environment, service providers' resources are best spent serving customers and providing new and innovative services. Due consideration must be given to alternative data sources and reported information as all businesses do not track the same information in the same way or format. Information is tracked due to the dictates of the individual business. Although such information may not provide the Commission the accuracy in seeks, the public interest would not be severely hampered.

The Commission also needs to reexamine its conflicting signals regarding the matter of the handling of the confidentiality of the data which it requests. Qwest believes that the current practices pertaining to the confidential treatment of the data should be retained and that the Commission's proposed revisions establishing a "rebuttable presumption" that the data submitted does not meet the "standards for competitively-sensitive information" be rejected.

Respectfully submitted,

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March 19, 2001

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be filed with the FCC via its Electronic Comment Filing System, and a copy of the **COMMENTS** to be served, via hand delivery on all parties listed on the attached service list.

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